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In The

SUPREME COURT OF THE UNITED STATES

No. 557

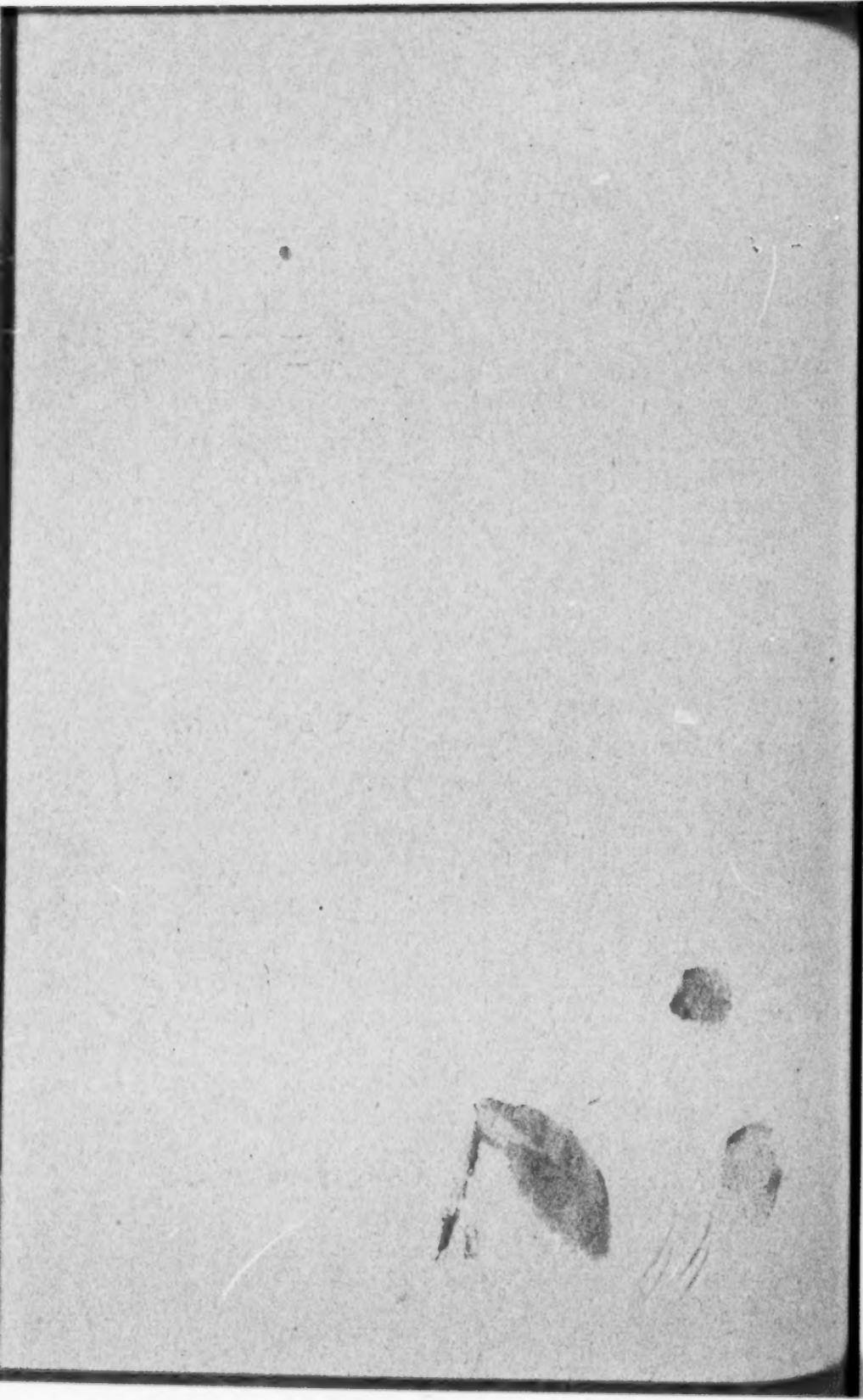
EDITH HARRISON EPP, A SECURED CREDITOR,
PETITIONER,

v.

ROBERT F. BICKNELL, DEBTOR, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF
APPEALS, EIGHTH CIRCUIT, AND
BRIEF IN SUPPORT THEREOF.

C. A. SORENSEN, Lincoln, Nebraska,
Counsel for Petitioner.



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Counsel for Petitioner.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF
APPEALS, EIGHTH CIRCUIT.**

*To the Honorable, The Chief Justice and the Associate
Justices of the Supreme Court of the United States:*

Edith Harrison Epp, petitioner, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals, Eighth Circuit, in the

above cause, designated in said court as No. 12588 in Bankruptcy, wherein this petitioner was appellant and the respondent appellee.

Said judgment was entered on November 12, 1943. The opinion of the court below is not yet reported but is found on pages 62 to 69, inclusive, of transcript of record in this cause, certified to on November 30, 1943, by E. E. Koch, clerk of the United States Circuit Court of Appeals, Eighth Circuit, herewith submitted.

The jurisdiction of this court is invoked under Section 347 (a) of the Judicial Code as amended (28 U. S. C. A. 347).

The questions presented by this petition for writ of certiorari are:

1. Under Section 75 of the Bankruptcy Act, as amended (11 U. S. C. A. 203), does the bankruptcy court obtain jurisdiction over property in which the farmer-debtor at the time of the filing of his petition or amended petition did not have a bona fide equity or right because conveyed to him with his knowledge for the purpose of hindering, delaying or defrauding a secured creditor of the grantor?

2. Where a non-farmer owner of an undivided one-half interest in mortgaged farm land in foreclosure conveys such interest to his co-tenant, a relative, for a nominal consideration and for the purpose of enabling such co-tenant, about to file a petition for relief under Sub-sections (a) to (r) of Section 75 of the Bankruptcy Act, to list in his schedules the whole farm as his property, and a secured creditor of the non-farmer co-tenant is thereby defrauded or hindered and delayed in enforcing

his rights against the undivided interest in the land of such non-farmer co-tenant and against the non-farmer co-tenant on his note secured by a mortgage on said land, does the bankruptcy court, over the protest of the secured creditor, have jurisdiction to administer in such farmer-debtor proceedings the interest in the land of the non-farmer co-tenant fraudulently conveyed?

3. Where a conveyance of an undivided interest in land to a prospective farmer-debtor petitioner under Section 75 of the Bankruptcy Act is void under the laws of Nebraska for having been made with the intent to hinder, delay or defraud a creditor of his lawful rights, and the farmer-debtor includes such land interest in his schedules or inventory, may the defrauded creditor move the bankruptcy court for an order to strike such land from the debtor's schedules or in the alternative to require the schedules to be amended to show that the debtor is not the owner thereof?

A summary and short statement of the matter involved follows (Opinion, U. S. Circuit Court of Appeals, Trans. pp. 62-65):

On July 12, 1937, the respondent, Robert F. Bicknell, and one Charles W. Peek, his brother-in-law, being indebted to one Annie Bell in the sum of \$9,000 for the purchase price of a farm, in which Bicknell and Peek each owned an undivided one-half interest, made and delivered to her their certain promissory note in that amount, and to secure payment of the same executed and delivered to her their certain mortgage deed wherein they conveyed to her said farm. In due course said note and mortgage were assigned to Edith Harrison Epp, the petitioner herein. Thereafter, the indebtedness be-

ing in default, a suit to foreclose the mortgage was brought in the state court and on June 24, 1940, a decree of foreclosure was entered, the court finding that there was due Epp, mortgagee, the sum of \$10,008.29, with interest. On the same day Peek and Bicknell obtained a nine months' stay of execution. On May 5, 1941, the farm was sold at sheriff's sale to Epp for \$9,600. On May 21, 1941, prior to but upon the eve of the confirmation of the sale, Peek, then a merchant, for the consideration of one dollar, conveyed his undivided one-half interest in the farm to Bicknell, the respondent herein. The transfer of Peek's interest to Bicknell was made in the office of Bicknell's attorney, and upon his suggestion, and in contemplation of Bicknell filing a farmer-debtor petition for relief under Subsections (a) to (r) of Section 75 of the Bankruptcy Act. Two days later Bicknell filed such a petition. Bicknell, on November 10, 1941, amended his petition asking for relief under Subsection (s). In the schedules attached to the first and the amended petitions, Bicknell listed the farm in question as property belonging to him.

Epp, a secured creditor by virtue of said mortgage, filed a motion in the bankruptcy court for an order to strike from the schedules of Bicknell, debtor, the undivided one-half interest in the land conveyed to him by Peek, or in the alternative to require that the schedules be amended to show that Bicknell was only the owner of an undivided one-half interest in the land. An order overruling this motion was entered. Upon appeal this order of the bankruptcy court was affirmed.

The statutes involved are Subsections (c), (d), (n), (o), (p), and (s) of Section 75 of the Bankruptcy Act

as amended, and Sections 36-101, 36-401, 20-2142, and 20-1530, Compiled Statutes of Nebraska for 1929, which are set forth in the Appendix of Brief hereto annexed.

The reasons relied on for the allowance of the writ are:

1. The conveyance for a nominal consideration from Peek to Bicknell, respondent, of Peek's undivided one-half interest in the land and the immediate filing by Bicknell of petition for relief under Section 75 of the Bankruptcy Act with claim to be sole owner, interposed a legal obstacle between Epp, secured and pursuing creditor, and Peek, non-farmer relative of the respondent, in that:

A. While the farmer-debtor proceedings are pending and the land remains in the custody of the bankruptcy court, this petitioner is prevented from getting a sheriff's deed to Peek's undivided one-half interest therein, notwithstanding that under the laws of Nebraska the conveyance from Peek to Bicknell may be void.

B. While the foreclosure proceedings as to the land remain frozen because of the proceedings by Bicknell under Section 75 of the Bankruptcy Act, this petitioner cannot bring an action at law against Peek on his note secured by the mortgage being foreclosed, it being the law in Nebraska that where a creditor has brought an action in foreclosure to enforce payment of a debt he cannot while the same is pending resort to an action at law for the recovery of the debt secured by the mortgage.

2. The decision of the Circuit Court of Appeals appears to authorize a farmer owning mortgaged land as a joint-tenant with a non-farmer relative to acquire the

interest of such relative for a nominal consideration contemporaneous with and in contemplation of the filing of a petition for relief under Section 75 of the Bankruptcy Act, and to thereby subject the entire interest in such land to the exclusive jurisdiction of the bankruptcy court, notwithstanding that such conveyance may be fraudulent under the laws of the state in which the land is situated.

3. The construction by the Circuit Court of Appeals of the laws of Nebraska with respect to conveyances fraudulent as to creditors and the right of co-tenants to redeem property from liens, appears to differ from the interpretation and construction of said laws by the Supreme Court of Nebraska, the state's highest court.

4. The decision of the Circuit Court of Appeals appears to overrule, or do violence to the reasoning in, *Shapiro v. Wilgus*, 287 U. S. 348; *Hill v. Topeka Morris Plan Co.*, (C. C. A.) 105 Fed. (2d) 299; *In re Collins*, (C. C. A.) 75 Fed. (2d) 62; *In re Brown*, (C. C. A.) 118 Fed. (2d) 871.

5. In its decision, the Circuit Court of Appeals relies in part on *Mangus, et al. v. Miller*, 317 U. S. 178, a case which, it is suggested, is not in point under the facts in the case at bar.

Wherefore, it is respectfully submitted that this petition for writ of certiorari should be granted.

Respectfully submitted,

C. A. SORENSEN,
Counsel for Petitioner.

